REMARKS/ARGUMENTS

Claims 1-5 are pending in the application. Claims 1-5 have been rejected. The Office Action objected to Claims 3-4 as allowable if rewritten to include limitations of the base and intervening claims. Applicant appreciates the indication of allowability and respectfully requests reconsideration of the rejection of the claims in view of the following remarks.

Rejections under 35 U.S.C. §112.

The Office Action has rejected claim 2 under 35 U.S.C. §112 as being indefinite. Applicant respectfully traverses the rejection for the following reasons. The Office Action argues that T_{ho} can be of any value. Applicant respectfully traverses that conclusion. Claim 1, from which claim 2 depends, specifically defines Tho as being a value that defines the time duration that a TCP connection request may await service by the system. Moreover, claim 2 further specifies that the value is within a range $[T_{min}, T_{max}]$. For example under claim 2 the value of T_{ho} cannot be greater than T_{max}. Therefore, it cannot be *any* value as the Office Action contends.

Rejections under 35 U.S.C. §103

The Office Action rejected claims 1-5 under 35 U.S.C. §103(a) as unpatentable over U.S. Patent 6,775,704 issued to Watson (hereafter, "Watson").

Claim 1 relates to a method of regulating TCP/IP connection requests which await service in a system by a TCP/IP connection control table to prevent overload thereof. Watson, on the other hand, relates to a system and method for preventing a spoofed remote procedure call denial of service attack in a networked computing environment.

Claim 1 requires the steps of:

a) monitoring usage of said system on a dynamic basis,

b) based upon said usage, dynamically computing a time-out value T_{ho} which defines the time duration that a TCP connection request may await service by said system, and

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c) removing from said TCP/IP connection control table all TCP/IP connection requests which have been awaiting service in said TCP/IP stack for a duration exceeding T_{ho}.
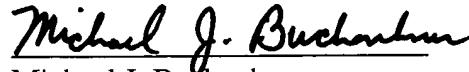
The Office Action concedes that Watson does not disclose computing a time-out value as claimed but argues that "it would have been obvious to one of ordinary skill in the art to be motivated to introduce a variation of the Watson teachings by dynamically recomputing a time out value based upon usage, dynamically recomputing a time out value based on usage to thwart or prevent system from overload or DoS attacks when system usage surges above normal expected rate." Applicant respectfully traverses that conclusion.

With respect to Claim 1, the Office Action does not prove that Watson teaches or suggests removing TCP/IP connection requests from a TCP/IP connection control table as required by Claim 1, element (c). By contrast, the Summary of the Invention of Watson shows that Watson uses a process that is completely different from that claimed herein. Watson's system intercepts service requests from clients and generates a token. The Watson system then intercepts responses and then invalid responses are discarded. This is the opposite of removing TCP/IP connection requests as required by Claim 1. Therefore, Watson teaches away from the claimed method, and the Office Action has failed to set forth a *prima facie* case of obviousness.

The Office Action has also failed to make a *prima facie* case of obviousness because it uses an incorrect legal standard and has not satisfied the requirement of introducing evidence in the cited reference that a person skilled in the art would have been motivated to modify Watson to produce the invention as claimed. See, In re Zurko, 258 F.3d 1379 (Fed. Cir. 2001). Rather, the Office Action states, "…it would have been obvious to one of ordinary skill in the art to be motivated…" That is not the standard for obviousness. The law is clear that the USPTO must show a teaching, motivation, or reason for combining teachings, not that the motivation would have been obvious. In this case, the Office Action concedes a difference between the claimed invention and the only cited reference and produces absolutely no evidence of a teaching, suggestion or motivation to modify Watson.

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For the foregoing reasons, Applicant respectfully requests allowance of the pending claims and that a timely Notice of Allowance be issued in this case.

Respectfully submitted,
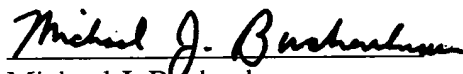
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I hereby certify that this Amendment and Response to Office Action is being deposited with the United States Postal Service with sufficient postage as First Class mail in an envelope addressed to: Commissioner for Patents, Alexandria, VA 22313-1450, on this the 3rd day of March, 2005.

Michael J. Buchenhorner

Michael J. Buchenhorner

Date: March 3, 2005

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